

My name is Peter Weiss, President of the General Category Tuna Association. I am also Chairman and Chief Executive of Bradford Industries, Inc., a manufacturer of coated fabrics in Lowell, Massachusetts, employing approximately 175 people.

There are over 7,500 permitted fishermen in the General Category; 2,820 from Massachusetts, 1,069 from Maine, and 469 from New Hampshire. Although it is obvious not all of the permit holders are active fishermen, many thousands are. Over 1,000 individuals captured Bluefin Tuna last year. General Category permit holders are commercial fishermen who sell their fish. When all these boats and fishermen are lumped together, one must assume the Bluefin Tuna Fishery is one of the largest commercial fisheries in the United States.

No state in the country benefits more from the Bluefin Fishery than the Commonwealth of Massachusetts. It is not just the \$25 to \$32 million dollars in sales of Bluefin Tuna annually, but also the tens of millions in economic activity stemming from all the unsuccessful fishing effort; bait and tackle, marinas, fuel, insurance, hotels, boat manufacturers, etc.

The Magnuson Stevens Act was an important step in an effort to conserve fish and also conserve the fisherman. I do not claim to be an expert on fisheries, but I have been fishing for BFT for 30 years, and I do feel I am somewhat knowledgeable on various fishing matters.

I have several different issues that I would like to comment on. Section 301, Paragraph 2, of the Act states, ***A Conservation and management measures shall be based upon the best scientific information available.***®

The disputes between scientists and fishermen are as old as time. Today, many new assessment tools are available to scientists. As an example, we now have available pop-up tag technology which allows us to see the distance, depth, and migration routes Bluefin Tuna have traveled for a period of time after they have been tagged. The results of these tags have been amazing. Results have found that over 30% of the tagged fish have crossed over the imaginary 45 degree boundary line that separates the Eastern and Western management areas. These tags prove beyond a doubt that there is more intermingling among Eastern and Western stocks than had been previously thought, yet the NMFS scientific community is very slow to use these tagging results in any type of Bluefin Tuna assessment. I would urge this committee to put language in the Magnuson Act that would force the NMFS scientists to use these pop-up tags in their further assessments as soon as possible. If this is done in the U.S., the SCRS of ICCAT will then be forced to use the results of these tagging studies. One must remember, it does not behoove countries fishing in the Eastern Atlantic to find proof that there is much intermingling of stocks. Right now, the two stock theory and the arbitrary dividing line results in all of the conservation being done in the West by U.S. fishermen. Here we have an opportunity to use 21<sup>st</sup> Century science in assessments to fix the flawed science and unfair management program. A total of 52,000mt were reported caught in the East in 1996, while only 2500mt of Bluefin were caught in all of the West. This is totally ridiculous!

NMFS has over 100 lawsuits pending at this particular time. It seems to me that this is rather an excessive amount of lawsuits. I believe some of these suits are frivolous, others are not. I believe when the Magnuson Act is reauthorized, many areas in the Act have to be clarified so that the true intent of various sections are not ambiguous and allows anyone who is not happy with the NMFS rule to hire a lawyer and sue.

As an example, the conservation community, led by the National Audubon Society, has sued National Marine Fisheries over rebuilding of Bluefin Tuna stocks. They claim, under the Act, there should be a ten year rebuilding program. On the other hand, NMFS claims that the current rebuilding program is appropriate and interprets the Act correctly due to the quota of the Fishery which is regulated by ICCAT. Both these interpretations come from the Act. The fact that there are so many lawsuits must be interpreted as a signal that there is something wrong. I believe clarification of the Act in various areas would be very important and there is an immediate need to make serious progress in this area.

I would like to make a short comment on law enforcement. Fishery rules and regulations are useless unless they are enforceable, and there is no question that the amount of new rules in fisheries, including the Bluefin Tuna Fishery, has multiplied in the last ten years, especially since implementation of the Sustainable Fisheries Act. Nevertheless, to the best of my knowledge, NMFS still has approximately the same amount of enforcement agents it had ten years ago. If you are going to create rules and you are going to spend time reauthorizing this Act to make it more efficient, I urge you, whether it be in the Act itself, or in your important positions as Senators, to see to it that NMFS has available to it the monies to dramatically enlarge its enforcement staff. I can tell you from my own experience in the Bluefin Tuna Fishery, effective enforcement is difficult, at best, and that is not because enforcement is not capable, it is because it does not have the manpower nor the resources. I just cannot emphasize enough, rules without enforcement are no rules at all.

This brings me to my last subject, one that I am personally deeply involved in and have the support of 99% of the permitted holders in the General and Harpoon Categories. As you know, for the last several years, NMFS and all the organizations involved in the Fishery have worked together to try to bring a workable fishing plan for the domestic Bluefin Tuna Fishery. We have settled many of our differences. Today, a Bluefin Tuna fisherman knows when he is going to fish, what his quota is, what days off he has, and all the other important issues that he faces during the season. We only have one major, major domestic problem left, and this problem, unless it is corrected, will continue to create more havoc in this Fishery than one can believe. I am talking about vessels using spotter planes to capture Bluefin Tuna. Spotter planes are the scourge of the Fishery. We are not talking about many planes, probably 25 at a maximum, and in the Harpoon Category, approximately 17 boats. These 17 boats using spotter planes in the Harpoon Category capture approximately 95% of the fish in that Category. In my written testimony, I have included a chart which shows the amount of Bluefin captured by individual boats. In the Harpoon Category, the top 17 boats all use spotter planes and captured over 90% of the fish. How can this situation be tolerated when a Magnuson Act National Standard mandates that: ***If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.***

The use of spotter planes in both the General and Harpoon Categories is creating a situation nothing short of chaotic. The wild west has reinvented itself off the waters of New England. The Harpoon Category was established because it represented a special and unique method of capturing Bluefin. It was supposed to be weather dependent and that's why multiple daily catches were allowed. Airplanes were never a part of this tradition. The General Category method of taking Bluefin also did not historically use aircraft. In fact, as NMFS has stated, part of the rationale for the General and Harpoon Categories was to spread the greatest number of fish among the greatest number of fishermen. Airplanes are preventing this objective from ever being achieved.

I could spend many hours talking about this issue, but within the context of my timeframe, I will just quickly make the following points. Airplanes encourage cheating, since they can see enforcement from a long distance away, airplanes have been known to dive-bomb boats, my boat, in particular, when they feel the boat is encroaching upon the fish they are looking at. The ridiculous idea that pilots advocate that they are able to minimize the capture of undersized Bluefin because of their ability to tell the size in the air is nothing short of a joke. Can you imagine being able to tell the difference between a 72 and a 73" fish from 500 feet in the air; 72 being legal and 73 being not. Airplanes have driven many fishermen to the point where the only method of fishing to them without competing with airplanes is chumming. Spotter planes and their boats accelerate the catch in both the Harpoon and General Categories. It is not unusual for the Harpoon Category to be filled by the middle of July. Before the advent of airplanes, many times the Harpoon Category was not even caught after a whole season of fishing. Pilots are not regulated by NMFS, they are not licensed by NMFS, and they are not fishermen. General Category boats using spotter planes also cheat by capturing more than one fish, passing extra catches to other boats or skiffs, interfere with other fishermen, and, as I have stated before, create havoc.

Two years ago, NMFS adopted a final rule banning airplanes in the General Category from using spotter planes. They left out the Harpoon Category in this rule which was a gigantic mistake. The Spotter Pilot Association sued the Secretary and won a ruling in Federal Court in Boston which held NMFS to be arbitrary and capricious in its ban. NMFS then stated that this issue should be addressed by the Highly Migratory Advisory Panel of which I am a member. This Panel was created by the Magnuson Act.

I have sat on this Panel for two years and we tried to reach consensus on issues, consensus being the preferred avenue. In two years, consensus was impossible to reach on almost any issue, but we did reach a strong consensus on the spotter planes issue. The vote was unanimous, with two abstentions, to ban the use of spotter planes by fishing vessels. This Panel is made up of over 20 members from the academic community, the environmental community, commercial, and recreational fishermen. With this advice in hand, last March, NMFS proposed a new rule banning spotter planes in both the General and Harpoon Categories. To this very day and to this very moment, after numerous false promises by NMFS to Congress and the fishermen, this proposed rule of last March is not final. Why is it not final? The explanation I get is the Justice Department is afraid Secretary Daley will be held in contempt of court. Not only do we not believe this, but the lawyers who we have hired to intervene in this matter if it ever comes to court again agree not only will the secretary not be held in contempt, but we had a very good chance of winning the case. The Government is just plain afraid to lose in court. This is a completely unacceptable reason not to again finalize a rule banning spotter aircraft which gathered more

supportive comments for NMFS than any other rule in its history.

I urge you to consider and do the right thing and establish a law banning fishing vessels from using aircraft to assist them in the capture of Bluefin Tuna. As I have stated before, 99% of the fishermen in the Bluefin Tuna Fishery do not want airplanes. Please use any alternative necessary to get this done before another Giant Bluefin season is ruined for the vast majority of permit holders.

Finally, for the record, Senator, GCTA supports the administrative and technical changes suggested by East Coast Tuna last September in Portland, Maine relative to National Standard No. 8 and the HMS Advisory Panel and the ICCAT Commissioners.